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3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. In any action by KDHE to enforce the terms of this Consent Order, the Respondent agrees not to contest the authority or jurisdiction of the Secretary of Health and

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Environment to issue this Consent Order.

4. This Consent Order shall apply to and be binding upon KDHE and the Respondent, its agents, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondent shall alter its responsibilities under this Consent Order.

5. The Respondent shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. The Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Consent Order and for ensuring that its contractors and agents comply with this Consent Order.

6. (a) The objectives of the KDHE and Respondent in entering this Order are for Respondent to perform, with KDHE oversight (including coordination with EPA), a Comprehensive Investigation/Corrective Action Study ("CI/CAS"), including evaluation of alternative remedial technologies, and interim remedial measures as may be appropriate, and for Respondent to reimburse KDHE for its reasonable response costs to be incurred by KDHE with respect to the Unison site.

(b) While the Respondent to this Consent Order does not admit liability for the contamination at the Unison site and the surrounding environment, nevertheless it agrees to enter into this Consent Order to prepare a Work Plan as described in paragraph 22 below, to be attached hereto marked Exhibit 4 and incorporated herein upon approval by KDHE.

7. (a) The CI/CAS and any interim remedial measures will address soil and ground water contamination from hazardous substances at the Unison site. KDHE has notified the United

States Environmental Protection Agency ("EPA") that this Order is being issued; EPA has agreed that KDHE is the lead Agency for coordinating, overseeing and enforcing activities conducted pursuant to this Order. All activities inside the former Unison building relative to facility closure will continue to be performed under EPA lead pursuant to the Toxic Substances Control Act (TSCA) until such time as EPA/TSCA grants closure of the interior of the building itself in compliance with the existing TSCA permit for the Unison facility. EPA will be given the opportunity to review and comment upon reports generated during the CI/CAS process, and KDHE will coordinate with EPA relative to comments, suggestions, etc., EPA may submit during the CI/CAS process.

(b) The activities conducted under this Consent Order are subject to KDHE approval and shall be undertaken in a manner that is consistent with the KERA, and the National Contingency Plan (NCP), 40 CFR Part 300.

FINDINGS OF FACT

8. The Unison ("Unison" or "the Site") Site is located in the southwest 1/4 of Section 27, Township 10 North, Range 25 East. The site is situated at 3126 Brinkerhoff Road, in the Fairfax Industrial District of Kansas City, Wyandotte County Kansas. A diagram of the Site is included as Exhibit 1.

9. The Environmental International, Inc., (EII) Company originally installed and operated a polychlorinated biphenyl (PCB) cleaning facility for electric transformers at the Site in 1982. EII was reorganized to form Environmental International Electric Services (EIES). EIES operated at the Site until 1987. During this time period trichloroethylene (TCE) was used as a cleaning and degreasing agent in the process. EIES was issued a Toxic Substances Control Act (TSCA) permit for the facility by EPA in 1984. Envirocare Management Corporation (EMC) assumed management of the facility in 1986. The permit was suspended in 1987 because of repeated non-compliance notices, spills and deficiencies in operation at the facility since 1984.

10. Unison Transformer Services (Unison) signed an operating agreement with EMC in late 1988. Unison, utilizing a new process, which Respondent states utilized substantially increased environmental controls, reinitiated cleaning and reclamation of PCB-contaminated transformers during operation of the facility until 1991. The facility has not been in active operation since mid-1991.

11. Respondent conducted a voluntary investigation in 1994 at the site. KDHE and EPA were notified of, and have been provided with the results of this investigation. Respondent has also conducted various activities related to facility closure and/or site response activities since December 1992 in consultation with KDHE and/or EPA.

12. PCBs and TCE have been documented in soils and ground water at the site above KDHE Interim Remedial Guidelines (for soils) and Maximum Contaminant Levels (ground water).

13. Releases from contaminated soils and groundwater at the Unison Site and adjacent areas may potentially cause or threatens to cause pollution of the waters of the State or is or threatens to become a hazard to persons, public health, or safety.

CONCLUSIONS OF LAW

14. Respondent is a "person" within the meaning of K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq., and K.S.A. 65-3452a, et seq.

15. The presence of the contaminants identified in the groundwater underlying the site constitutes "pollution" as defined by K.S.A. 65-171d.

16. Some of the contaminants identified in the groundwater underlying the site are "hazardous substances" as defined by K.S.A. 65-3452a and "hazardous wastes" as defined by K.S.A. 65-3430.

17. The area defined in paragraph 8 and identified as Unison constitutes a "site" within

the meaning of K.S.A. 65-3453.

18. The facts above constitute:

- a) the discharge, abandonment, or disposal of hazardous substances or hazardous wastes;
- b) the pollution of the land or waters of the state or the threat of pollution of the land or waters of the state;
- c) a hazard to persons, property or public health or threatens to become a hazard to persons, property or public health.

19. Under the facts as shown above, the Kansas Department of Health and Environment has concluded, and the Secretary has confirmed, that there is a need for a response action to prevent a continuing release or threat of release of hazardous substances.

20. The Kansas Department of Health and Environment has authority to enter the agreement herein, and to make the findings of fact and conclusions of law herein stated.

21. The Secretary of Health and Environment is authorized by K.S.A. 65-3453, K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq. and the regulations issued pursuant thereto to enter a Consent Order confirming the agreement of the parties. The parties hereto agree to the following activities and the commitments.

ORDER

22. Within 60 days of the effective date of this Consent Order, Respondent shall submit a draft Work Plan for KDHE approval which is consistent with the Statement of Work ("SOW") attached hereto, marked Exhibit 2.

KDHE will provide comments on the draft Work Plan. Within 30 days of receipt of KDHE's comments, Respondent shall submit for final approval a revised Work Plan that addresses

KDHE's comments. Upon KDHE approval, the Work Plan shall become incorporated into this Consent Order and a part thereof as Exhibit 4.

23. Within 30 days from date of KDHE approval of the Work Plan, Respondent shall commence the implementation of the tasks detailed in the Work Plan. The work shall be conducted in accordance with the standards and specifications contained in the Work Plan, and the implementation schedule.

24. Respondent shall provide preliminary and final reports to KDHE according to the implementation schedule contained in Exhibit 4 in a form responsive to KDHE's comments.

25. After KDHE reviews the preliminary reports and after KDHE reviews the final reports, KDHE shall notify Respondent in writing, of KDHE's approval or disapproval of these reports or any part thereof. KDHE shall also notify Respondent in writing in the event of any KDHE disapproval of Respondent's implementation of the approved Work Plan.

26. In the event of any KDHE disapproval of a submitted report or disapproval of Respondent's implementation of the approved Work Plan, KDHE shall send Respondent a Notice of Disapproval delineating the basis for such disapproval, requiring revisions to the reports or modified work to address KDHE's concerns, and setting a schedule for response by Respondent, provided however that any such requirements are consistent with the objectives of the Work Plan and Consent Order.

27. Thereafter, Respondent shall amend and submit to KDHE revised reports which address KDHE's comments. Comments or suggestions by KDHE shall not be construed as disapproval unless they so specify. In the event of any KDHE disapproval of reports or deliverables set out in Exhibit 3, stipulated penalties shall not begin to accrue until after Respondent has had an opportunity to revise and resubmit such report or deliverable in a form responsive to KDHE's comments.

28. KDHE may determine that additional tasks are necessary in addition to the approved Work Plan tasks including reports, which have been completed pursuant to this Consent Order. KDHE may require Respondent to implement any such additional tasks within a time frame specified by KDHE. Failure by Respondent to implement additional tasks as required by KDHE, shall be considered a violation of this Consent Order. If Respondent objects to any additional tasks determined by KDHE to be necessary pursuant to this paragraph, Respondent may seek Dispute Resolution pursuant to paragraph 48 of the Consent Order.

29. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site investigations and remediation. Within 30 days of the effective date of this Consent Order, Respondent shall notify KDHE in writing of the name, title, and qualification of the supervising engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Consent Order.

30. Any reports, plans, specifications, schedules and attachments required by this Consent Order are, upon approval by KDHE, incorporated into this Consent Order. Any non-compliance with such approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Consent Order.

31. No informal advice, guidance, suggestions, or comments by KDHE regarding reports, plans, specifications, and any other writing submitted to Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

QUALITY ASSURANCE

32. All samples analyzed pursuant to this Consent Order shall be analyzed laboratory methodologies approved by KDHE.

33. All sample collection and analysis shall be performed in compliance with the approved Work Plan, including scheduling of analyses, documentation of sample collection, handling and analysis.

34. Laboratory analytical report forms shall be submitted to KDHE for all analytical work performed pursuant to this Consent Order. Any deviations from the procedures and methods set forth in these documents must be approved in writing by KDHE prior to use. Respondent will notify KDHE in writing within ten (10) working days of notice or knowledge of a deviation from prescribed procedures or methods. Such notice shall provide information as to the nature of the deviation, if known, and outline a proposed investigation to determine whether the sample or results are potentially representative or should not be considered valid. If the results cannot be validated by evaluation of the Quality Assurance/Quality Control procedures, historical data, or laboratory protocol, Respondent will resample at KDHE's discretion. Respondent will notify KDHE at least seven (7) days before conducting resampling. Failure to follow the above procedure for notification of deviations will be considered violations of this order and will be subject to an administrative penalty of \$1,000 per violation and the data resulting therefrom shall be invalid.

35. Respondent shall use the quality assurance, quality control, and chain of custody procedures specified in the Quality Assurance Project Plan, which is part of the Work Plan, for all sample collection and analysis performed pursuant to this Order, unless otherwise agreed to in writing by KDHE.

36. All contracts for field work shall provide that KDHE representatives are allowed access, for auditing and evaluation purposes, at reasonable times upon reasonable request, to all personnel utilized by Respondent for sample collection and analysis and other field work. Upon request by KDHE, the laboratories shall perform analysis of a reasonable number of known samples provided by KDHE to demonstrate the quality of the analytical data.

REPORTING

37. Respondent shall provide KDHE with written progress reports quarterly, pursuant to the effective date of the Consent Order. At a minimum, these progress reports shall: (1) describe the actions, progress, and status of projects which have been taken toward achieving compliance with this Consent Order, as well as the actions which are scheduled for the next quarter; (2) identify any requirements under this Consent Order that were not completed as provided and any problem areas and anticipated problem areas in complying with this Consent Order; and (3) include all results of sampling, tests, data, and conclusions drawn from data generated pursuant to the Work Plan(s).

ACCESS

38. KDHE and any of its agents or contractors is authorized by Respondent to enter and freely move about all property at the site for the purposes of, inter alia; interviewing site personnel and contractors; inspecting records, operating logs, and contracts related to the activities set out in the Work Plan; reviewing the progress of Respondent in carrying out the terms of this Consent Order; conducting such sampling and tests as KDHE deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to KDHE by Respondent. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this paragraph provided, however, that nothing herein shall be interpreted as limiting Respondent's rights to preserve the confidentiality of attorney work product or attorney-client communications.

39. To the extent that work required by the Work Plan must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain access agreements from the present owner(s) of such property within forty-five (45) days of the effective date of this

Consent Order or the date that the need for such access is first identified. Any such access agreement shall be incorporated by reference into this Consent-Order. In the event that any agreements for site access identified as necessary as of the effective date of this Consent Order are not obtained within ninety (90) days of the effective date of this Consent Order, Respondent shall notify KDHE regarding both the lack of and its failure to obtain such agreements within seven (7) days thereafter. In the event that KDHE obtains access for Respondent, all reasonable costs incurred by KDHE in obtaining such access shall be reimbursed by Respondent. Upon KDHE's obtaining access for Respondent, Respondent shall undertake approved work on such property. KDHE shall not be responsible for any injury or damage to persons or property caused by the negligent or willful acts or omissions of Respondent, its officers, employees, agents, successors, assigns, contractors, or any other person acting on Respondent's behalf in carrying out any activities pursuant to the terms of this Consent Order. If Respondent cannot meet the schedule set forth in or pursuant to the Consent Order due to failure to obtain access to property not owned or controlled by Respondent despite its use of best efforts to obtain such access, it shall be considered a force majeure pursuant to paragraph 47 of this Consent Order. KDHE shall determine what constitutes best efforts for the purpose of this paragraph.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

40. Respondent shall make available to KDHE all results of sampling, tests, or other data generated by or on its behalf with respect to the implementation of this Consent Order. Respondent shall submit these results in the progress reports described in the "Reporting" Section of this Consent Order. KDHE will make sampling results and other data available to Respondent.

41. Respondent shall notify KDHE at least seven (7) days before conducting any well drilling, installation of equipment, or sampling, provided, however, that if seven (7) days notice of

sample collection activity is not possible, KDHE and Respondent shall give such advance notice to enable each party to have a representative present during said sample collection activity. At the request of KDHE, Respondent shall provide or allow KDHE or its authorized representatives to take split samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent KDHE shall allow Respondent or its authorized representatives to take split or duplicate samples of all samples collected by KDHE under this Consent Order. KDHE shall notify Respondent at least seven (7) days before conducting any sampling under this Consent Order, provided, however, that if seven (7) days notice of sample collection activity is not possible, KDHE and Respondent shall give such advance notice to enable each party to have a representative present during said sample collection activity.

RECORD PRESERVATION

42. Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, at least one copy of all records and documents which have not previously been provided to KDHE in its possession or in the possession of divisions, employees, agents or consultants or contractors which relate in any way to the activities conducted pursuant to this Consent Order. At the conclusion of six (6) years, Respondent shall then make such records available to KDHE for KDHE's further retention prior to destroying such documents.

STIPULATED PENALTIES

43. For each period of time that Respondent fails to submit reports or deliverables at the times set out in Exhibit 3 which is part of this Consent Order, Respondent shall pay as stipulated penalties the following: \$4,000 for the first week of delay or part thereof; \$4,000 per day for each

day of delay for the 8th through 14th day; and, \$5,000 per day of delay thereafter.

44. Any stipulated penalties shall be payable within forty-five (45) days after Respondent's receipt of demand by KDHE and shall be paid by certified check to:

Secretary of Health and Environment
Landon Building - 900 SW Jackson
Suite 904
Topeka, Kansas 66612-1290

A copy of the check and a transmittal letter shall be sent to the KDHE contact specified herein. Respondent shall remit a check for the full amount of penalty stated in the demand.

45. Should Respondent fail to submit reports or deliverables at the times set out in Exhibit 3 to this Consent Order, the period of noncompliance shall terminate upon Respondent's performance of said requirement.

46. Notwithstanding any other provision of this section, KDHE may in its discretion waive any portion of stipulated penalties that may have accrued pursuant to this Consent Order.

FORCE MAJEURE

47. Delays that result from causes not foreseeable and beyond the Respondent's control and which cannot be overcome by due diligence shall not be a violation of the Respondent's obligations under this Agreement. The Respondent shall notify KDHE orally as soon as possible, but no later than five (5) business days after the Respondent knows of any delay or anticipated delay in compliance with the requirements of this Agreement, and in writing no later than five (5) business days after the oral notification of the delay. The written notice shall describe the nature of the delay, whether and why the delay was unforeseeable and beyond the control of the Respondent, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, and the anticipated length of the delay. The Respondent shall adopt all measures to avoid or minimize such delay. To

the extent a delay is caused by circumstances beyond the control of the Respondent, or those resulting from delays caused by KDHE or any third party not under the control or employment of any of the signatories hereto, the schedule shall be extended for a period equal to the delay resulting from such circumstances. Such an extension does not alter the schedule for performance or completion of other tasks required by this Agreement unless set forth in writing by KDHE. Failure to comply with the notice provision of this section may be grounds for KDHE to deny the Respondent an extension of time for performance. Unexpected delay events do not include unanticipated or increased costs of performance, changed economic circumstances, or normal precipitation events. If KDHE determines that the delay as stated in the Respondent's written notice to KDHE was not due to unexpected delay events, an administrative penalty may be assessed as provided in paragraph 34.

DISPUTE RESOLUTION

48. a. If Respondent disagrees, in whole or in part, with any decision by KDHE pursuant to this Consent Order, Respondent shall notify KDHE within thirty (30) days of receipt of the decision. The parties shall then have an additional thirty (30) working days to attempt to resolve the dispute. If an agreement is reached, the resolution shall be reduced to writing, signed by each Party and incorporated thereupon into this Consent Order. If agreement is not reached, KDHE shall issue a final written decision on the dispute.

b. Respondent reserves its right to appeal any decision of the KDHE, which is not consistent with law or which is arbitrary or capricious concerning a dispute under this Consent Order, to an administrative body with applicable jurisdiction and thereafter in compliance with the Kansas Administrative Procedures Act. The final decision or resolution of the applicable authority or court shall be incorporated as a part of this Consent Order. For purposes of this Consent Order,

final order or decision shall mean an order or decision from which no appeal may be taken.

c. In the event that Respondent seeks dispute resolution concerning a date for performance of an act set out in the Work Plan, the date for performance of such act shall be extended for a period equal to the delay resulting from the invocation of the dispute resolution provision. However such extension does not alter the schedule for performance of completion of other tasks required by this Consent Order unless also specifically altered in writing by KDHE.

d. However, in the event that it is determined that dispute resolution was not sought in good faith, administrative penalties may be assessed at the rate of \$1,000 per day for each day of delay caused by such invocation of the dispute resolution provisions.

OTHER CLAIMS AND PARTIES

49. Nothing in this Consent Order shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

OTHER APPLICABLE LAWS

50. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the substantive requirements of all applicable local, state, and federal laws and regulations including CERCLA and the NCP.

PROJECT COORDINATORS

51. On or before the effective date of this Consent Order, KDHE and Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing

the implementation of this Consent Order. The KDHE Project Coordinator will be KDHE's designated representative. To the maximum extent possible, all communications between Respondents and KDHE and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators. The parties agree to provide at least seven (7) days written notice prior to changing Project Coordinators. The absence of the KDHE Project Coordinator from the Site shall not be cause for the stoppage of work.

NOTIFICATION

52. Unless otherwise specified, reports, notice or other submissions required under this Consent Order shall be in writing and shall be sent to:

- a. For KDHE:
Randy Brown
Kansas Department of Health and Environment
Forbes Field, Bldg. 740
Topeka, Kansas 66620-0001
Phone: (913) 296-1673
FAX: (913) 296-1686
- b. For Respondent:
Robert E. O'Bryan
Program Manager
Union Carbide Remediation Group
3301-5 Avenue South; Bldg. 88 Rm 24
Texas City, Texas 77592-0471
Phone: (409) 948-5226
FAX: (409) 948-5339.

REIMBURSEMENT OF COSTS

53. a. Three months after the effective date of this Consent Order and quarterly thereafter, KDHE shall submit to Respondent an accounting of all oversight costs incurred by KDHE

with respect to this Consent Order during the previous three month period.

b. If KDHE determines a Baseline Risk Assessment is appropriate, Respondent may, at its option, perform such assessment for submittal to KDHE for approval. In this event the Respondent shall pay the reasonable costs of KDHE's contractor to review the assessment on behalf of KDHE. In the event the Respondent elects not to perform the assessment, KDHE shall submit to Respondent an accounting for the reasonable cost of performing the Baseline Risk Assessment. Upon receipt of such accounting, Respondent agrees to reimburse KDHE for such amount. KDHE agrees to use a qualified contractor to perform such Risk Assessment.

c. Respondent intends to perform the work contemplated by this Consent Order consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("N.C.P."), 40 C.F.R. §300.430-435. KDHE will prepare a Community Relations Plan consistent with 300.430© of the NCP and thereafter respondent will implement it. KDHE shall submit to Respondent an accounting for the cost of preparation and implementation of the Plan. KDHE agrees to perform such work itself or use a qualified contractor to develop and implement such Plan. Upon receipt of such accounting, Respondent agrees to reimburse KDHE for the costs incurred.

d. KDHE shall submit to Respondent the reasonable cost of preparing and maintaining the Administrative Record, including but not limited to photocopying, assembling, mailing, updating, storage and other maintenance services. Upon receipt of such accounting, Respondent agrees to reimburse KDHE for such amount.

54. KDHE shall submit to Respondent an accounting of those costs described above which have been incurred by KDHE with respect to this Consent Order during the previous fiscal year. Respondent shall, within forty-five (45) calendar days from receipt of said accounting, remit a check for the amount of those costs made payable to the Secretary of Health and Environment. Checks should specifically reference the identity of this site, and should be addressed to:

Kansas Department of Health and Environment
Landon Building - 900 S.W. Jackson
Suite 904
Topeka, Kansas 66612-1290

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein.
Respondent shall remit a check for the full amount of those costs.

EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

55. This Consent Order shall become effective when signed by the Secretary of the Department of Health and Environment.

56. This Consent Order may be amended by mutual agreement of KDHE and Respondent. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both parties, and shall be incorporated into this Consent Order. Nothing herein shall limit KDHE's ability to require additional tasks as set forth in paragraph 28 herein.

TERMINATION

57. The provisions of this Consent Order shall terminate upon Respondent's receipt of written notice from KDHE that Respondent has demonstrated that the terms of this Consent Order, including any additional tasks which KDHE has determined to be necessary have been satisfactorily completed.

IN WITNESS WHEREOF, the parties have affixed their signatures below:

RESPONDENT:

RF Michael W. Sowa
Unison Transformer Services, Inc.
By: Michael W. Sowa
President

Date: July 31, 1997

STATE OF KANSAS:

Gary R. Mitchell
Gary R. Mitchell, Secretary
Kansas Department of Health &
Environment

Date: 9-12-97

CERTIFICATE OF MAILING

I hereby certify that on this 16 day of September 1997, a true and correct copy of the above and foregoing Consent Order was deposited in the United States Mail, postage prepaid, and addressed to:

Roger Florio
Environmental Counsel
Union Carbide Corporation
39 Old Ridgebury Road
Danbury, Connecticut 06817

Linda Smith
Staff Person